

NAFR

HIGH COURT OF CHHATTISGARH, BILASPUR**WP227 No. 246 of 2015**

(Arising out of order dated 23.01.2015 in Civil Suit No. 59-A/13 of the learned 1st Civil Judge, Class-I, Raipur)

- Dr. M. Khalil Ullah S/o Late M. Khalil Ullah Aged About 78 Years R/o 2, Ring Road, Lajpat Nagar-Iv, New Delhi. Civil & Revenue District New Delhi

---- Petitioner**Versus**

1. Syed Rizwan Ali, S/o Shri Syed Jafar Ali R/o Opposite Byron Bazar Masjid, Raipur, Tahsil And District Raipur, (Chhattisgarh)
2. Shiv Kumar Sahu S/o Shri Daulal Sahu R/o Village Barounda, Tahsil & District Raipur (Chhattisgarh)
3. Krishna Kumar Sinha S/o Shri Ramcharan Sinha R/o Guru Tegbahadur Nagar, New Puraina, Tahsil & District Raipur, (Chhattisgarh)
4. Gyasuddin Ahmed S/o Shri Jiyauddin R/o Behind Lalganga Shopping Mall, G.E. Road, Tahsil & District Raipur, (Chhattisgarh)
5. State of Chhattisgarh Through The Collector, Raipur.

---- Respondents

For Petitioner	:	Shri B.P. Sharma and Shri Raza Ali, Advocates
For Respondents No.1 to 4	:	Shri Yogesh Pandey, Advocate
For Respondent No.5/State	:	Shri R.K. Gupta, Deputy Advocate General

Hon'ble Thottathil B. Radhakrishnan, Chief Justice

Order on Board**04.12.2017**

1. Heard the learned Counsel for the Petitioner and the learned Counsel for the Respondents.
2. This is an application under Article 227 of the Constitution of India. In the usual course, this is one of those which could have been nullified by taking the view that the questions raised would not be germane for decision for jurisdiction under Article 227 of the Constitution of India, but on a deeper consideration I am of the view that this case requires a different approach.

3. The Petitioner is the Plaintiff in a suit for declaration of title and other reliefs in relation of movable property. The suit from which this writ petition arises is before the Civil Judge, Class-I, Raipur. At the time of institution of this matter he was aged about 78 years. This means that now he is around 80 years of age. He is resident of New Delhi. He applied to the Court below that he and a witness who is residing in Noida may be examined through Commission. The Court below dismissed it. This matter is pending here for the last two years.
4. Having regard to the provisions for examination of the witnesses through Commission and similar other provisions brought to the procedural laws through the amendments of CPC in 1999 and 2002, I am persuaded to take the view that this is an exceptional situation where this Court would come to the aid of the octogenarian plaintiff by granting the relief of permitting him and his witness to be examined through Commission at his expense. The petitioner will deposit such *batta*, fare and other expenses and costs as may be decided by the Trial Court. It is so directed and this writ petition is ordered accordingly, vacating the impugned order. The parties are directed to mark appearance before the Court below on 15.12.2017. The Court below will issue requisite consequential orders.

Sd/-
(Thottathil B. Radhakrishnan)
Chief Justice